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FILED

DEC 12 2019

Montana Water Court

Attorneys for WILLIAMS RANCHES, INC.

MONTANA WATER COURT, LITTLE MISSOURI RIVER
ABOVE LITTLE BEAVER CREEK BASIN (39F)

CLAIMANTS: WILLIAMS RANCHES, INC.	CASE NO: 39F 15738 00 MOTION TO REINSTATE WITHDRAWN CLAIM
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Claimant Williams Ranches, Inc., through counsel, hereby moves the Court to reinstate Claim 39F 15738 00 pursuant to M.R.Civ.P. Rule 60(b)(1) and/or Rule 52.

I. Claim 39F 15738 00 was inadvertently withdrawn.

Claim 39F 15738 00 is for a stock water right in the NENENE of Section 9, Township 8S, Range 57E in Carter County, Montana. It claims an October 20, 1963 priority date based on the affidavit of John Peters signed on February 5, 1981 for 4,000 sheep. Claim 39F 15738 00, Original File, p. 2 & 5. The facts surrounding the withdrawal of the claim are discussed more fully in the affidavit of William Josephson, president of Williams Ranches, Inc. (the "Josephson Affidavit") attached hereto as Exhibit 1.

William Josephson is the grandson of the original claimant Conrad A. Williams, who claimed the right with his siblings Winifred E. Davis and Robert A. Williams. Josephson Affidavit, p. 1. In the summer of 2018, William Josephson retained Bill Bishop to aid in the examination of the water rights of Williams Ranches, Inc. *Id.* Bill Bishop subsequently reviewed

the ranch's water rights and suggested withdrawing claim 39F 15738 00. *Id.* Along with that suggestion, Mr. Bishop prepared a request to withdraw the water right and indicated on that request that "Pit/reservoir was constructed post 06/30/1973". *Id.* Mr. Josephson then reviewed the claim file and the following statement from John Peters regarding the claim 39F 15738 00:

The silted in reservoir was replaced by a stock watering pit in 1972 immediately below the original location

Based on the John Peters statement and other conversations Mr. Josephson had, which are more fully described in his affidavit, he decided not to withdraw the claim. Josephson Affidavit, p. 2. However, when Mr. Josephson printed the withdrawals prepared by Mr. Bishop, he inadvertently printed the prepared withdrawal for claim 39F 15738 00. He was traveling at the time, and inadvertently filed it. This was in error. *Id.*

Counsel for Mr. Josephson discovered the error when they began to review the preliminary decree ahead of the November 19, 2019 deadline for objections in Basin 39F.

II. A claim may be reinstated for error.

In *Circle S. Ranch, Inc.*, Case 41P-108, Mont. W. Court, May 16, 2019 ("Circle S"), this Court held that a finding of "mistake" under M.R.Civ.P. Rule 60(b)(1) is the standard that a party must meet to reinstate a claim. Circle S, p. 9. This Court also determined that the "good cause" factors present in M.R.Civ.P. 55 were incorporated, which are: "(1) whether the [claimant] proceeded with diligence; (2) whether its neglect was excusable; (3) whether the judgment, if permitted to stand, will affect the [claimant] injuriously; and (4) whether the [claimant] has a meritorious defense." *Id.*

Mr. Josephson made a clear mistake. He did **NOT** intend to withdraw Claim 39F 15738 00, but simply got his papers mixed up. If the Claim is not reinstated, Williams Ranches, Inc., will

lose nearly fifty years of priority associated with the Claim as it will have to file a new permit for the reservoir. The examination of Basin 39F is still in its infancy, and the counter objection period has not ended. The error was excusable. As discussed in more detail below, Claim 39F 15738 00 can be reinstated without injury to any other parties who can still object to the claim.

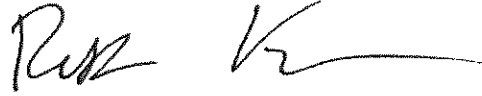
III. Prejudice to other parties can yet be avoided.

In order to ensure that no parties are prejudiced by the reinstatement of Claim 39F 15738 00, that is they have the opportunity to object, Williams Ranches, Inc. retained WGM Group, Inc. to review which adjacent landowners would likely to be affected by the reinstatement of the right. Patrick Doyle, a GIS specialist with WGM Group, has identified only three (3) landowners that would be expected to have an interest in whether Claim 39F 15738 00 was reinstated. Mr. Doyle's affidavit is attached hereto as Exhibit 2. These are landowners with downstream rights on North Willow Creek before North Willow Creek confluences with Willow Creek, a point that is approximately fifteen stream miles (six miles direct) from Claim 39F 15738 00's point of diversion. A map showing the location of these owners is included with the Mr. Doyle's affidavit. Given the extraordinarily arid nature of this part of Montana, any users outside of this zone would likely have a futile call.

If the Court approves the reinstatement of Claim 39F 15738 00, the Claimant proposes to send the notice attached as Exhibit 3 to each landowner identified by Mr. Doyle, the BLM and the Montana DNRC which have filed objections to other claims of the Claimant, and provide public notice for three consecutive weeks in the Ekalaka Eagle in substantially the same form.

DATED this 5th day of December, 2019.

PARSONS BEHLE & LATIMER
Attorneys for Williams Ranches, Inc.

A handwritten signature in black ink, appearing to read 'Ross P. Keogh', written over a horizontal line.

Ross P. Keogh

EXHIBIT 1

MONTANA WATER COURT, LITTLE MISSOURI RIVER
ABOVE LITTLE BEAVER CREEK BASIN (39F)

CLAIMANTS: WILLIAMS RANCHES, INC.	CASE NO: _____ 39F 15738 00 AFFIDAVIT OF WILLIAM JOSEPHSON
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STATE OF NEW YORK)
 : ss
County of NEW YORK)

I, William Josephson, being first duly sworn, testify as follows:

1. I am over the age of 18 years. The information in this affidavit is my own personal knowledge.
2. I am Vice President of Williams Ranches, Inc., I have held that position since June 15, 2006.
3. Williams Ranches, Inc., was formed in 1986 by my grandfather, Conrad A. Williams, and his siblings Winifred E. Davis and Robert A. Williams to hold the ranch known as the "Williams Ranch" which is headquartered approximately 12 miles East of Alzada, off of Highway 212. I am the sole beneficial owner of Williams Ranches, Inc.
4. Williams Ranches was assembled by my great great grandfather Conrad Nuhn from land obtained under the Homestead Act and private purchases. Conrad Nuhn was the grandfather to Winifred E. Davis, Conrad A. Williams, and Robert A. Williams.
5. Williams Ranch is currently operated as a sheep ranch with approximately 4000 head.
6. In my capacity as Vice President of Williams Ranches, Inc., I retained Bill Bishop in July of 2018 for support with the examination of the ranch's water rights.

7. As part of that work, Bill Bishop prepared a withdrawal for claim 39F 15738 00. I understood that he suggested that this claim be withdrawn because the reservoir was constructed after June 30, 1973.

8. I talked with Marcia Williams (my mother) about withdrawing claim 39F 15738 00. She told me that she remembered that there was an affidavit from John Peters supporting the claim.


9. John Peters was the former ranch manager who managed the ranch from some time in the late 1960s until 1980, at which time Carly and Gene Brimmer took over day-to-day operations.

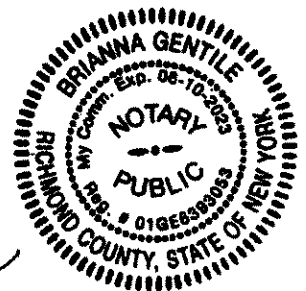
10. On or about September 21, 2018, I decided not to file the withdrawal that Mr. Bishop had prepared for claim 39F 15738 00.

11. Later that week I was traveling. While traveling, I printed the withdrawals and other motions to amend that had been prepared. I mistakenly included claim 39F 15738 00 and filed it with the Court.

12. I made an error in withdrawing claim 39F 15738 00.

DATED this 20th day of ~~October~~ November 2019.


William Josephson



On the 20th day of November, 2019 before me, the undersigned, a Notary Public for the State of New York, personally appeared William Josephson, known to me to be the person who executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year first above written.



Notary Public

EXHIBIT 2



AFFIDAVIT OF PATRICK DOYLE

STATE OF MONTANA)
 : ss
County of Missoula)

Patrick Doyle being first duly sworn, deposes and states as follows:

Background Information

I am of legal age and reside in Missoula, Montana. I am a GIS Technician for WGM Group, Inc. in Missoula. I have worked in the GIS field for several years with a focus on water rights for the last year.

Statement of Claim 39F 15738 00

Statement of Claim 39F 15738 00 was filed for a stockwater reservoir located in the NE¼ NE¼ NE¼ Section 9 Township 8S Range 57E on the source known as North Willow Creek. This reservoir is approximately 2 acres in size and approximately 8 acre-feet (2 acres x 10 feet x 0.4) in capacity.

In October of 2019, I conducted a water right query search and included data from the Montana Natural Resource Information System (NRIS) and Montana Cadastral to create the attached map to determine which water right owners were likely to be affected by the reinstatement of Claim 39F 15738 00. Based on my search of publicly available data (including the DNRC's Water Rights Query Database) I have made the following determinations:

1. The Bureau of Land Management owns water right claims on the North Willow Creek. These water right claims, however, are upstream and senior to claim 39F 15738 00.
2. Other than the claims held by the Bureau of Land Management and the owner of claim 39F 15738 00, no other claims are upstream of claim 39F 15738 00.
3. In the reach of North Willow Creek from the subject reservoir downstream to its confluence with Willow Creek (a distance of more than 15 stream miles), there are three property owners with water rights as shown below.
4. The State of Montana owns property downstream of claim 39F 15738 00, but does not have water rights on the reach of north Willow Creek.

Downstream List

VICKY MCCUTCHAN
HC 56 BOX 59
ALZADA, MT 59311

(Vicky McCutchan is the record owner of 39F 174041 00, but the place of use is now owned by the Johnson Family Trust.)

JOHNSON FAMILY TRUST
210 KAUFMAN TRL
ALZADA, MT 59311-8514

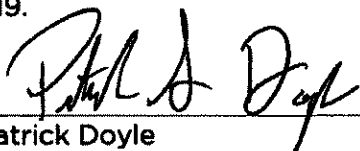
COCHRAN GRAZING ASSN
PO BOX 111
BOYES, MT 59316

PILSTER RANCH CORP
55 PILSTER DRIVE
ALZADA, MT 59311

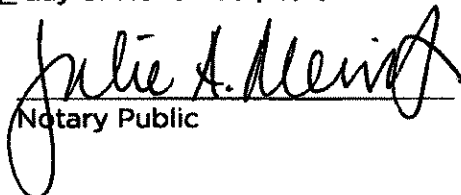
Further affiant sayeth not.

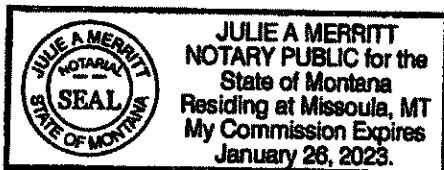
I, Patrick Doyle, having been duly sworn, depose and say that I, being of legal age and being the person whose name is signed to this affidavit, know the matters stated herein to be true and correct.

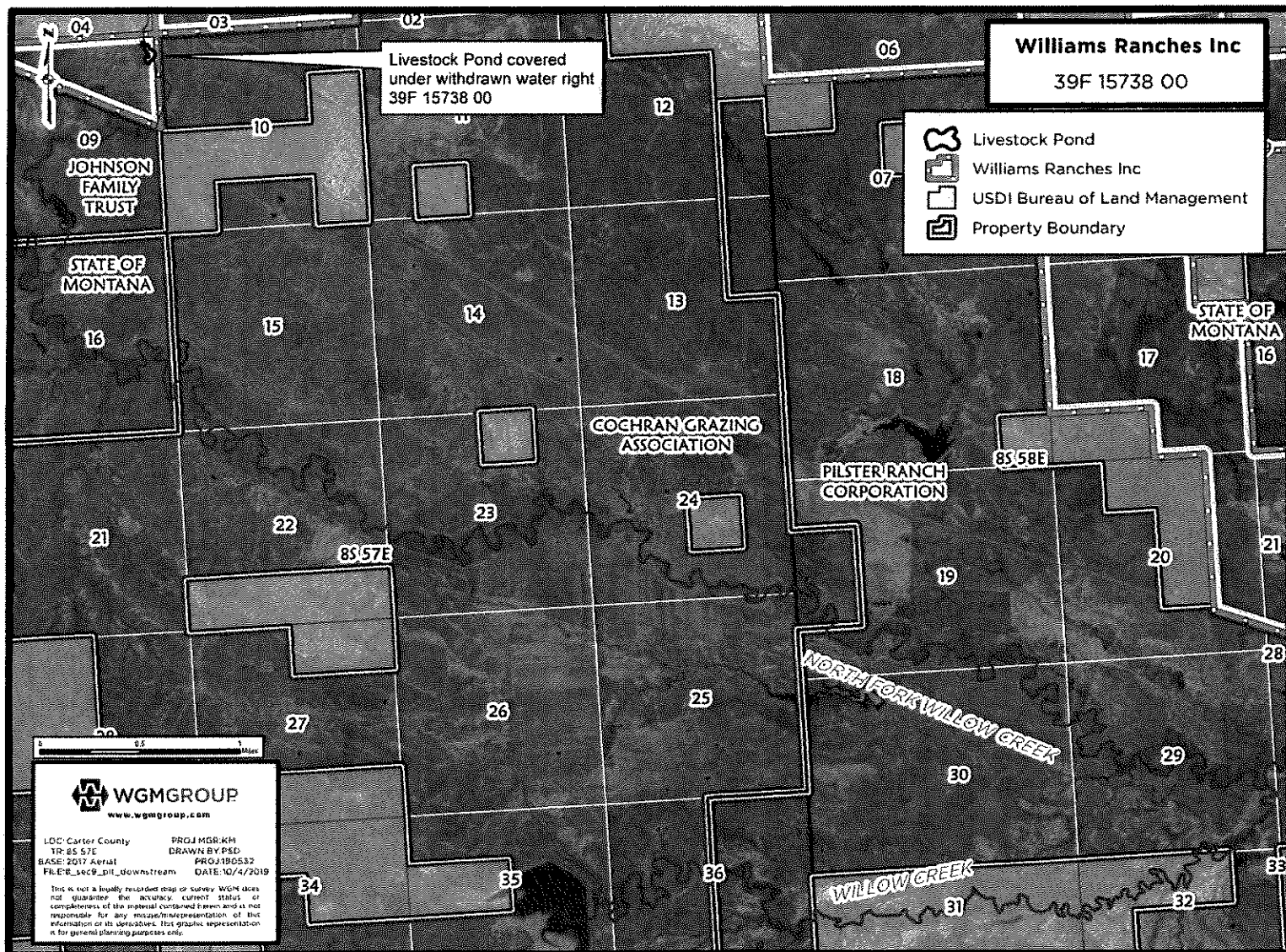
DATED this 25th day of November, 2019.



Patrick Doyle

Subscribed and sworn before me this 25th day of November, 2019.


Notary Public






**GATHEY
ANDREW L**
32

7S/57E

33

Williams Ranches Inc

39F 15738 00

**TATE REVOCABLE
LIVING TRUST**

**USDI BUREAU
OF LAND
MANAGEMENT**

**WILLIAMS
RANCHES INC**

03

05

TATE GERALD

04

WOLF CREEK

**WILLIAMS
RANCHES
INC**
8S/57E

**COCHRAN
GRAZING
ASSOCIATION**

10

08

**JOHNSON
FAMILY TRUST**

09

**USDI BUREAU OF
LAND MANAGEMENT**

**NORTH FORK
WILLOW
CREEK**



WGM GROUP
www.wgmgroup.com

**STATE OF
MONTANA**

16

LOC: Carter County
TR: 8S 57E
BASE: 2017 Aerial
FILE: 7_sec9_pit_neighbors
PROJ MGR: KM
DRAWN BY: PSD
PROJ: 190532
DATE: 10/4/2019

This is not a legally recorded map or survey. WGM does not guarantee the accuracy, current status, or completeness of the material contained herein and is not responsible for any misuse/misrepresentation of this information or its derivatives. This graphic representation is for general planning purposes only.

0 0.25 0.5 Miles



Livestock Pond



Owner Parcels



Williams Ranches Inc

EXHIBIT 3

To: [name of landowner]

As you may be aware, the Montana Water Court has entered its Preliminary Decree for Basin 39F. You should have received the letter attached hereto¹ in late May regarding this process. Since that notice went out, Williams Ranches, Inc., has determined that it mistakenly withdrew one of its water rights, Claim 39F 15738 00, the abstract for this water right is attached hereto.

On December [date], Williams Ranches, Inc. requested that the Water Court reinstate the withdrawn water right. The Court granted that motion and ordered that Williams Ranches, Inc. send you this letter. Pursuant to the Court's order, attached hereto, you may object to Claim 39F 15738 00 outside the normal objection window as provided in the Preliminary Decree. In particular, you have until January 30, 2020 to file an objection. Objections can be filed in the same manner as provided for in any water right included in the preliminary decree.

If you have any questions, you may contact Ross Keogh, counsel for Williams Ranches, Inc. at Parsons Behle & Latimer, 110 East Broadway, Suite 206, Missoula, MT 59802, phone 406-333-0520 or contact the water court.

¹ http://dnrc.mt.gov/divisions/water/adjudication/basin-documents/39f-p_notice.pdf